IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRL.R.C.NO.637 OF 2004

Philip Antony .. Petitioner/Respodent

-vs-

1. Mrs. Raichal Jayamani
2. Minor Pradeep
3. Minor Neevidha Nancy
   Minors represented by their mother
   Mrs.Raichal Jayamani .. Respondents /Petitioner

This Revision is filed under Sections 397 and 401 of Cr.P.C. against the order passed by Judicial Magistrate,Tambaram in Crl.M.P.No.478 of 2003 in M.C.No. 24 / 1990 dated 23.10.2003.

For petitioner : : Mr.S.Arivazhagan

For respondents: : Notice served
none appeared.

O R D E R

The revision petitioner is the respondent in M.C.No.24 of 1990 on the file of the Judicial Magistrate, Tambaram which was filed under Section 125 of Cr.P.C. by the respondents herein (wife and the children of revision petitioner herein).

2. As per the order in M.C.No.24 of 1990,the petitioners in M.C.No.24 of 1990 /respondents herein were awarded maintenance at the following rates. The first petitioner/first respondent was awarded Rs.300/- per mensum towards maintenance and other two minor petitioners /respondents 2 and 3 herein were awarded Rs.250/- per mensum each towards maintenance. Subsequently for enhancement of the said maintenance amount ordered by the learned Trial Judge,the respondents herein/petitioners in M.C.No.24 of 1990 have filed Crl.M.P.No.478 of 2003 in M.C.No.24 of 1990 under Section 127 of Cr.P.C. with a prayer to enhance the maintenance amount to Rs.500/- each. The learned trial Judge, after giving due considerations from the submissions made

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

by the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondent has allowed the petition as prayed for, taking into consideration, the cost of living and also the fact that the petitioners are still living separately without the protection of the revision petitioner herein, who is the husband of the first respondent herein and the father of the respondents 2 and 3 herein, which necessitated the husband/respondent in Crl.M.P.No.478 of 2003 in M.C.No.24 of 1990 to prefer this revision petition.

3. The learned counsel appearing for the revision petitioner would contend that even in the year 1992, the revision petitioner/husband has filed I.D.O.P.No.98 of 1992 before the District Judge, Chengleput, for restitution of conjugal rights and the same was ordered on 28.7.1994. Subsequent to the disposal of I.D.O.P.No.98 of 1992 only the order in Crl.M.P.No.478 of 2003 has been passed which, according to the learned counsel for the revision petitioner, is illegal. But on a perusal of provisio 3 to Section 125 of Cr.P.C. even in a case like this, the petitioners are entitled to get an order of maintenance, if they show sufficient reason for refusal to live with the husband/revision petitioner. Even in I.D.O.P.No.98 of 1992, the husband/revision petitioner herein has raised the contention that an order for restitution of conjugal rights has been passed in his favour but inspite of it, without any sufficient reason, the wife refuses to live with him. But it is to be noted here is that even M.C.No.24 of 1990 itself was disposed of on 20.1.1992 by the learned trial Judge, before the order passed in I.D.O.P.No.98 of 1992 .

4. Further it is pertinent to note that I.D.O.P.No.98 of 1992 was an exparte order and subsequent to the passing of an order in his favour for restitution of conjugal rights, the revision petitioner/husband has not taken any steps to execute the order passed in I.D.O.P.No.98 of 1992. The fact remains that the respondents herein/wife and the children are still living separately and are receiving the maintenance as ordered in M.C.No.24 of 1990 dated 20.1.1992.

5. The learned counsel appearing for the revision petitioner would contend that the date of birth of the second petitioner Minor Pradeep is 15.11.1985 and has become major as on 14.11.2003 and under such circumstances, the second petitioner Pradeep is entitled to receive the maintenance till 14.11.2003 only. This contention of the learned counsel appearing for the revision petitioner has got force and is to be accepted in lieu of the provisions contemplated under Section 125 of Cr.P.C.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6. Under such circumstances, the revision is dismissed but with the modification that the second petitioner in M.C.No.24 of 1990/second respondent herein is entitled to get his maintenance from the revision petitioner herein only till 14.11.2003. In other aspects, the order of the learned trial Judge in Crl.M.P.No.478 of 2003 in M.C.No.24 of 1990 is confirmed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sg

To

1.The Judicial Magistrate,Tambaram
2.-do-through the Chief Judicial Magistrate,Chengleput.

AKR (CO)
km/11.7.

Crl.R.C.No.637/2004

सत्यमेव जयते
WEB COPY

https://hcservices.ecourts.gov.in/hcservices/